

INITIAL STATEMENT OF REASONS

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 1. GENERAL PROVISIONS ARTICLE 2. LEASING OR OTHER USE OF PUBLIC LANDS

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the proposed regulations is to update and amend Sections 1900, 2002, and 2003 under Articles 1 and 2 of Title 2, Division 3, Chapter 1 of the California Code of Regulations. Section 1900 is under Article 1, General Provisions, and is the *Definitions* section of the regulations. Section 2002, under Article 2, Leasing or Other Use of Public Lands, describes the *Categories of Leases or Permits*. Lastly, Section 2003, also under Article 2, sets forth the *Rental* for the various categories of leases and permits, including minimum annual rents, rent-setting methods, and other factors relevant to the setting of rent.

More specifically, the amendment to Section 1900 adds definitions for “sovereign lands,” “adjustment formula,” “CPI” and “impact area” to the list of definitions because the terms are used in the proposed amendments to Sections 2002 and 2003. The amendment to Section 2002 is to increase the number of categories of leases, permits, or agreements available to Commission staff. The amendment to Section 2003 is to update the minimum rents for the lease categories, modify the Commission’s rent-setting methods, and highlight other factors the Commission may consider when determining its leasing and rent-setting practices. Sections 2002 and 2003 have also been reformatted to make the regulations easier for the public to understand.

NECESSITY

The amendment to Section 1900 is needed because the term “sovereign lands” is a term of art that is used in Section 2002 of the current regulations without being defined and will continue to be used in the proposed regulations (in Section 2003 as well as 2002). The addition of the terms “adjustment formula”, “CPI” and “impact area” are necessary because they will be used in the rent calculation methodology proposed in the amendments to Section 2003.

The amendments to Section 2002 are necessary because the categories of leases and permits shown in the current regulation do not adequately address the types of leases, permits, and agreements that Commission staff is now being asked to authorize. Pursuant to Public Resource Code section 6500 *et seq.* the Commission is authorized to lease lands under its jurisdiction. Effective January 1, 2012, Public Resources Code Section 6503.5 was modified (Chapter 585, Statutes of 2011) to require the

Commission to charge rent for Private Recreational Piers. As a result, the rent free Private Recreational Pier Permit, identified in section 2002(f), will no longer be available. Revising the current categories of leases, permits and agreements will allow Commission staff to better define and structure leases based on the actual or proposed use while rendering certain permits, like the Private Recreational Pier Permit, obsolete.

Section 6503 of the Public Resources Code requires the Commission to *fix the annual rent or other consideration thereof*. The proposed amendments to Section 2003 are necessary in order to update the minimum annual rents, the methodology used in setting rental rates, and the identification of other factors pertaining to the Commission's rent setting practices. The current regulations regarding the Commission's leasing and rent setting practices were last revised in 1992 while the minimum rents contained in the regulations have not been updated since 1975 and 1982, respectively. These minimum rents are out of date and need be adjusted for inflation. For example, the pipeline rent rates, under Section 2003, calls for \$0.02, per diameter inch per linear foot, in rent and should be updated to reflect the cost of inflation thereby bringing the Commission's rental rates into line with the suggestions outlined by the 2010 Bureau of State Audit's (BSA) audit. Second, the BSA audit of the State Lands Commission, criticized the Commission not only for failing to adjust minimum annual rents to reflect inflation, but also for failing to use different rent setting methods and practices to review the value of its leases thereby increasing the amount of revenue generated by its leases. Based on the findings of the BSA audit, the Commission Staff is proposing additional rent-setting methods to address the creation of the new lease categories. For example, adjustments may be made to leases through the application of the California Consumer Price Index. Within this same context, the Commission proposes eliminating the rental methodology based on "the volume of commodities passing over the lease premises" (aka "throughput charges") because it has been held by a court of law to violate the Commerce Clause of the United States Constitution.¹ Finally, the proposed amendment identifies other factors that the Commission staff may take into account when setting the annual rent or adjusting the annual rent, including the addition of a reasonable "impact area" to the lease premises, the addition of an administrative fee for reimbursement of staff costs for managing the lease, and the discounting or waiving of rent if the lease results in a significant regional or statewide public benefit.

BENEFITS ANTICIPATED FROM THE PROPOSED REGULATORY ACTION

Commission staff has determined that the proposed regulations will benefit the State by bringing current the existing out-of-date lease categories, minimum annual rents, rent-setting methods, and other factors pertaining to the Commission's leasing and rent-setting practices. The proposed amendments are anticipated to result in an increase of approximately \$200,000 in revenue to the State. The increase will occur as leases come due for renewal. The re-writing and reorganization of Sections 2002 and 2003 will make the regulations easier to understand and follow.

¹ *Western Oil and Gas Assn. v. Cory*, 726 F.2d 1340 (1984).

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Aside from the 2010 BSA audit, there are no technical, theoretical, and/or empirical studies, reports, or documents associated with the proposed regulations. The proposed changes to the minimum rents in Section 2003 do, however, involve mathematical calculations. The current regulations specify minimum annual rent for five lease categories. The lease categories, their current minimum annual rents, and when they were last updated are shown below.

Commercial Use	\$250	1982
Industrial Use	\$250	1982
Right of Way	\$100	1975
General Permits	\$50	1982
Agricultural	\$250	1982

The proposed minimum rents were adjusted through the application of the California Consumer Price Index (CPI²) for the period of time since they were last updated. June CPI values, representing annual midpoints, were chosen to allow for a direct comparison between periods. Below is the formula that was used in calculating the CPI adjustments to the minimum rents.

$$\left(\frac{\text{Current CPI} - \text{Prior CPI}}{\text{Prior CPI}} + 1 \right) \times \text{Previous Year's Rent} = \text{Adjusted Annual Rent}$$

The CPI calculations for the five lease categories and the revised minimum annual rents are shown below, using the June 2012 CPI as the most recent benchmark, and rounded for ease of use.

Commercial Use:	$((237.781^3 - 98.500^4) / 98.500) + 1$	x	\$250	=	\$603.5	\$600 (Rd.)
Industrial Use:	$((237.781 - 98.500) / 98.500) + 1$	x	\$250	=	\$603.5	\$600 (Rd.)
Right of Way:	$((237.781 - 52.000^5) / 52.000) + 1$	x	\$100	=	\$457.3	\$450 (Rd.)
General Permits:	$((237.781 - 98.500) / 98.500) + 1$	x	\$50	=	\$120.7	\$125 (Rd.)
Agricultural:	$((237.781 - 98.500) / 98.500) + 1$	x	\$250	=	\$603.5	\$600 (Rd.)

As part of this proposed amendment, Commission staff is proposing to increase the number of lease categories having minimum annual rent from five (5) to ten (10). The five additional categories are: Grazing, Recreational, Public Agency, Protective Structure, and Dredging. Except for Dredging Leases, the current regulations acknowledge these additional categories; they do not however identify specific minimum annual rents. Dredging leases have been routinely authorized by the Commission since

² California Consumer Price Index: All Items (1982-1984=100) All Urban Consumers.

³ 237.781 is the CPI (All Urban Consumers) for June 2012.

⁴ 98.50 is the CPI (All Urban Consumers) for June 1982.

⁵ 52.00 is the CPI (All Urban Consumers) for June 1975.

before the 1992 update to the regulations. Prior to that time, Commission staff considered them to be part of the General Permit category.

Presented below are the proposed new minimum annual rents. The rents for the new lease categories are based on the CPI-adjusted General Permit category or on similarities to existing categories. For instance, grazing is considered to be similar to an agricultural use, so the minimum rent for the Agricultural category is used for the Grazing category.

Commercial Use:	\$600
Industrial Use:	\$600
Right of Way Use:	\$450
Grazing:	\$600
Agricultural:	\$600
Recreational:	\$125
Public Agency:	\$125
Protective Structure:	\$125
Dredging:	\$125
All other General Lease or Permits:	\$125

The California CPI is also used to update one of the rent-setting methods commonly used for pipelines and conduits. The 2¢ per diameter inch per linear foot was last revised in 1982 (being increased from 1½¢). Applying the California CPI to this method results in a new rate of five cents (5¢) per diameter inch per linear foot.

$$(((237.781-98.500)/98.500)+1) \times \$0.02 = \$0.048 \quad \$0.05 \text{ (Rd.)}$$

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), Commission staff must determine that no reasonable alternative, considered or otherwise identified and brought to the attention of Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

The purpose of the proposed regulation is to update and amend sections of the existing regulations that pertain to *Definitions*, *Categories of Leases or Permits*, and *Rental*. Staff has determined that there are no alternatives to *updating* the regulations other than continuing to use the existing regulations, which were last updated in 1992. Further, staff has investigated alternatives to *amending* the existing regulations and has determined that there are no alternatives that would be more effective in carrying out the purpose of the proposed regulation while lessening any adverse impacts to affected private persons or businesses.

SMALL BUSINESS IMPACTS

Commission staff finds that the proposed amendments to Title 2, Division 3, Chapter 1, Articles 1 and 2 of the California Code of Regulations will have a minor adverse impact on “small business” as defined in Government Code Section 11342.610. The impact would be from increasing the minimum rent levels. Relative to the Commissions’ lease categories, small businesses fall into the *Commercial, Industrial, or Agricultural* categories. There are a total of 253 leases in these lease categories. Only 30 (12%) of these 253 leases are at or below the minimum rent levels as shown in the current regulations. Each of these lease categories has a minimum annual rent of \$250. The rent levels for the vast majority of the other leases are generally much higher because they have been set using one of the other rent-setting methods, such as the 9% of appraised value of the leased lands. The 30 leases at or below the minimum rent level would only be subject to the minimum annual rent upon rent review or expiration and issuance of new leases. Unless one of the other rent-setting methods is used at that time, the minimum annual rent for each lease would increase from its current level of \$250 to \$600 annually. However, adjustments to the minimum annual rent will be adjusted in accordance with the California CPI to ensure that our minimum rental rates include the costs of inflation. According to the most recent data available, in 2009 there were 3.4 million small businesses (defined by the US Small Business Administration as a company with less than 500 employees) in California, with more than 691,000 of these businesses having employees. These regulations could potentially have a minor impact on 30 of those 3.4 million businesses. Considering the information above, the overall impact to California small businesses is minor.

REGULATIONS MANDATED BY FEDERAL LAW

The proposed regulations are not mandated by federal regulation.

EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The proposed regulations deal with the leasing of the State-owned lands under the jurisdiction of the California State Lands Commission. While there may be federal regulations that affect the properties under the Commission’s jurisdiction, the federal government has no authority to lease State-owned lands to other parties. Thus, the proposed regulations do not duplicate or conflict with federal regulations.

The following is the initial statement of reasons for each of the proposed regulatory changes below. Prior to the explanation for each provision, the current text of the regulation is set forth. Proposed amendments to the regulation are underlined. Deletions from the current text, as codified, are shown in strike-through format.

Title 2, Division 3, Chapter 1, Article 1, General Provisions

Section 1900. Definitions

The following definitions shall apply to this Chapter unless otherwise provided.

(a) The term “applicant” includes any person who files an application under these regulations.

(b) The term “person” includes any individual, firm, partnership, business entity, business trust, association, corporation, or governmental entity or agency.

(c) The term “lease” includes a permit, right-of-way, easement, license, compensatory agreement, or other entitlement of use.

(d) The term “structure” means any manmade construction.

(e) The term “sovereign lands” means the beds of all the State’s natural, navigable waterways, and tide and submerged lands, including those adjacent to the coast and offshore islands of the State from the mean high tide line to three geographic miles offshore. On tidal waterways, the State’s sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court order. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court order.

(~~e~~f) The term “submerged lands” means the area lying below the elevation of ordinary low water in the beds of all tidal and nontidal navigable waters.

(~~f~~g) The term “tidelands” means the area lying between the elevations of ordinary low water and ordinary high water on lands subject to tidal action.

(~~g~~h) The term “uplands” shall mean lands bordering on navigable waterways.

(~~h~~i) The term “school lands” refers to all Sections 16 and 36 granted to the State for the benefit of common schools by Chapter 145 of the Federal Statutes of 1853.

(ij) The term “lieu or indemnity lands” refers to those lands acquired by the State in place of school lands it previously acquired or school lands to which it did not receive title because they were either mineral in character, had not been sectionalized, or were subject to prior established rights.

(jk) The terms “merchandise,” “product” and “commodity” are interchangeable and shall include, goods, wares, chattels, personal property of every description, cargo, freight, mail, vessel's stores and supplies, articles, matter and material.

(l) The term “impact area” means a reasonable area beyond the footprint of the actual facilities or improvements occupying State land. The “impact area” is intended to reflect the additional and temporary use, as well as impacts to public access, of State land for the docking of vessels, maintenance of the facility, or other such uses.

(m) The following formula, hereafter called the “Adjustment Formula,” shall be used to determine the adjusted minimum annual rent for each year subsequent to 2013:

$$\left(\frac{\text{Current CPI} - \text{Prior CPI}}{\text{Prior CPI}} + 1 \right) \times \text{Previous Year's Rent} = \text{Adjusted Annual Rent}$$

1. The June CPI value for All Urban Consumers in California will be used in the rent adjustment formula.

(n) The term “CPI” means the index published periodically by the California Department of Industrial Relations’ and titled “California Consumer Price Index (1955) All Items 1982-1984 = 100,” a successor index to the aforementioned, or a reasonably equivalent index acceptable to the Lessor and Lessee.

Authority Cited: Sections 6002, 6105, 6108, 6301, and 6501, Public Resources Code; and City of Long Beach v. Mansell (1970) 3 Cal. 3d 462, 478 (tide and submerged lands).

Reference: Sections 6301 and 6501, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The purpose of the proposed amendment to Section 1900 is to add definitions for “sovereign lands,” “adjustment formula,” “CPI” and “impact area.” Section 1900 contains definitions used by the Commission in the California Code of Regulations and the proposed definitions, subparagraphs (e), (l), and (m), have been inserted, near other similar definitions. All the following definitions are re-numbered in sequence.

NECESSITY

The definitions for “sovereign lands,” “adjustment formula,” “CPI” and “impact area” are necessary because they are used in Sections 2002 and 2003 of the proposed regulations.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS AND BUSINESSES.

The purpose of the proposed regulation is to update and amend sections of the existing regulations that pertain to *Definitions*, *Categories of Leases or Permits*, and *Rental*. Staff has determined that there are no alternatives to *updating* the regulations other than continuing to use the existing regulations, which were last updated in 1992. Further, staff has investigated alternatives to *amending* the existing regulations and has determined that there are no alternatives that would be more effective in carrying out the purpose of the proposed regulation while lessening any adverse impacts to affected private persons or businesses.

Because of the number of changes and the extensive reformatting, the presentation of the proposed amendment to Article 2, Section 2002 involves showing the current regulation, as codified, in complete strike-through format, followed by the proposed regulatory changes in underlined format.

Title 2, Division 3, Chapter 1, Article 2, Leasing or Other Use of Public Lands

~~Section 2002. Categories of Leases or Permits.~~

~~(a) General Lease: Uses may include the following:~~

~~(1) Commercial: Income producing uses such as marinas, restaurants, clubhouses, recreation piers or facilities, docks, moorings, buoys, helicopter pads, decks or gas service facilities.~~

~~(2) Industrial: Uses such as oil terminals, piers, wharves, warehouses, stowage sites, moorings, dolphins and islands; together with necessary appurtenances.~~

~~(3) Right of Way: Uses such as roadways, power lines, pipelines or outfall lines, except when used only as necessary appurtenances.~~

~~(b) General Permit: Uses may include the following:~~

~~(1) Public agency uses such as public roads, bridges, recreation areas or wildlife refuges having a statewide public benefit;~~

~~(2) Public Resources Code Section 6321 protective structures such as groins, jetties, sea walls, breakwaters and bulkheads;~~

~~(3) Non income producing uses such as piers, buoys, floats, boathouses, docks, waterski facilities, and campsites not qualifying for a private recreational pier permit under 2002(f). Other uses may include campsites, cabins, dwellings, arks, houseboats, or boathouses provided that when such uses are located on sovereign lands that such uses are not found to be inconsistent with public trust needs.~~

~~(c) Grazing Lease: Use includes the feeding of livestock on forage.~~

~~(d) Agricultural Lease: Uses may include farming, silviculture and horticulture.~~

~~(e) Forest Management Agreement: Uses may include reforestation, improvement of timber growth and soil productivity, vegetation control, reduction of fire and erosion hazards, insect or disease control or any other use that enhances the value of lands subject to the agreement.~~

~~(f) Private Recreational Pier Permit: Use is limited to any fixed facility for the docking or mooring of boats constructed for the use of the littoral landowner, as specified in~~

~~Public Resources Code Section 6503.5, and does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats.~~

~~(g) Salvage Permit: Use includes the salvage of all abandoned property over and upon ungranted tide and submerged lands of the State which property belongs to the State and is under the Commission's jurisdiction pursuant to Public Resources Code Section 6309. The Commission may retain or sell any or all salvaged property or may allow the permit applicant to retain it.~~

Section 2002. Categories of Leases, Permits, or Agreements.

(a) General Lease: Uses may include the following:

- (1) Commercial: Income producing uses such as marinas, restaurants, hotels, clubhouses, piers, recreational facilities, docks, moorings, buoys, helicopter pads, decks, or gas service facilities.
- (2) Industrial: Uses such as oil terminals, piers, wharves, warehouses, stowage sites, moorings, dolphins and islands.
- (3) Right of Way: Uses such as roadways, power lines, pipelines or outfall lines.
- (4) Grazing: Uses such as the feeding of livestock on forage.
- (5) Agricultural: Uses such as farming, silviculture and horticulture.
- (6) Recreational: Uses such as a fixed facility for the docking or mooring of boats, buoys, swimming floats, platforms, and swim areas. Other uses may include campsites, cabins, dwellings, arks, houseboats, decks or boathouses provided that when such uses are located on sovereign lands those uses are not found to be inconsistent with public trust needs.
- (7) Public Agency: Uses such as public roads, bridges, recreation areas or wildlife refuges having a statewide public benefit.
- (8) Protective Structure: Uses such as groins, jetties, sea walls, revetments, breakwaters and bulkheads.
- (9) Dredging: Uses such as the removal of sediment to improve navigation and ensure public health and safety, and excavation.
- (10) Other uses that are not specifically identified above, such as environmental preservation, mitigation, or restoration; or protection against invasive species.

(b) Permits or Other Agreements: Uses may include the following:

- (1) Salvage Permit: Use includes all salvage operations on sovereign lands under the Commission's jurisdiction. Salvage operation means any activity, including search by electronic means, or exploration or excavation using tools or mechanical devices, with the objective of locating, and recovering, removing, or repositioning vessels, aircraft, or portions thereof, or any other cultural object from the surface or subsurface of sovereign lands.

- (2) Archaeological Permit: Activities such as surveying and identification of cultural resource sites, testing and evaluation of sites to determine eligibility for inclusion in the California Register of Historical Resources or the National Register of Historic Places, and data recovery for sites at risk of loss or damage by natural forces, vandalism, or unauthorized collection. Data recovery required as mitigation under the California Environmental Quality Act for a project approved by the Commission shall not require a separate archaeological permit.
- (3) Forest Management Agreement: Uses such as reforestation, improvement of timber growth and soil productivity, vegetation control, reduction of fire and erosion hazards, insect or disease control or any other use that enhances the value of lands subject to the agreement.

Authority Cited: Sections 6105, 6108, 6201, 6210.3, 6221, 6309, 6321, 6322, 6501, 6501.1, and 6501.2, Public Resources Code.

Reference: Sections 6201, 6309, 6321, 6501.1, and 6503.5, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

The amendment to Section 2002 updates and increases the categories of leases, permits, or other agreements available to Commission staff. The updated categories also provide more examples of the types of uses in each category. The categories are also reorganized and renumbered from the current regulation to make it easier for the public to understand and follow.

NECESSITY

The current regulations do not adequately address the types of leases, permits, and agreements that Commission staff is now being asked to consider. As an example, staff is proposing an *Archaeological Permit* category to address requests for archaeological investigations on State-owned land. Further, some of the lease categories are out of date and no longer applicable. Specifically, the enactment of Chapter 585, Statutes of 2011 on January 1, 2012, repealed section 6503.5 of the Public Resources Code, which had allowed the rent-free use of State-owned land for recreational piers by certain private parties. The new law replaced the former section with a new section 6503.5 which provides that the Commission “shall charge rent for a private recreational pier constructed on state lands.” Accordingly, the Commission has ceased authorizing Private Recreational Pier Permits [paragraph (f) of the current Section 2002] and staff is proposing eliminating this category from the regulations. All new leases for private recreational piers will be in the General Lease – Recreational Use category, which is the type of lease that was used for those private recreational piers that did not qualify for rent-free status under the former version of Public Resources Code section 6503.5.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD
LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS AND
BUSINESSES.

The purpose of the proposed regulation is to update and amend sections of the existing regulations that pertain to *Definitions*, *Categories of Leases or Permits*, and *Rental*. Staff has determined that there are no alternatives to *updating* the regulations other than continuing to use the existing regulations, which were last updated in 1992. Further, staff has investigated alternatives to *amending* the existing regulations and has determined that there are no alternatives that would be more effective in carrying out the purpose of the proposed regulation while lessening any adverse impacts to affected private persons or businesses.

Because of the number of changes and the extensive reformatting, the presentation of the proposed amendment to Article 2, Section 2003 involves showing the current regulation, as codified, in complete strike-through format, followed by the proposed regulatory changes in underlined format.

Title 2, Division 3, Chapter 1, Article 2, Leasing or Other Use of Public Lands

Section 2003. Rental.

~~(a) Rental for the various categories of uses shall be generally as follows:~~

~~(1) Commercial Use: An annual rental based on any one or combination of the following rental methods, with a minimum rental of \$250:~~

~~(A) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);~~

~~(B) 9% of the appraised value of the leased land;~~

~~(C) The volume of commodities passing over the lease premises.~~

~~(2) Industrial Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of \$250:~~

~~(A) 9% of the appraised value of the leased land together with 2H per diameter inch per lineal foot of pipelines and conduits on the leased premises;~~

~~(B) The volume of commodities passing over the lease premises.~~

~~(3) Right-of-Way Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of \$100:~~

~~(A) 9% of the appraised value of the leased lands, together with compensation for any damage caused to such lands;~~

~~(B) 2 cents per diameter inch per lineal foot;~~

~~(C) The volume of commodities passing over the lease premises.~~

~~(4) General Permits: Annual rental shall be based on 9% of the appraised value of the leased lands with a minimum rental of \$50.~~

~~(A) No rental shall be charged for public agency use of tide and submerged lands if the Commission at its sole discretion, determines that a statewide public benefit accrues from such use.~~

~~(B) Monetary rental for Public Resources Code Section 6321 protective structures may be waived if the Commission determines that a public benefit accrues from the installation of such structures.~~

~~(5) Private Recreational Pier Permits: Pursuant to Public Resources Code Section 6503.5 a rent free permit shall be issued to those applicants demonstrating their qualifications under that section as implemented by 2002(f).~~

~~(6) Grazing: An annual rental based on appraised value for the intended use.~~

~~(7) Agricultural: An annual rental based on any one or a combination of the following rental methods with a minimum rental of \$250:~~

~~(A) A percentage of annual gross income (the percentage being based on analysis of the market for like uses and other relevant factors);~~

~~(B) 9% of appraised value of the leased lands.~~

~~(8) Forest Management Agreements: Rental shall constitute enhancement of the land's value resulting from the use.~~

~~(9) Salvage Permit: Rental shall be as follows:~~

~~(A) A rental of \$25.00 per annum per acre, computed on a whole or fractional basis, for the total acreage of the permit area; and~~

~~(B) 25% of the net salvage value up to \$25,000 and 50% of all such value over that amount for all salvaged property the salvor is permitted to retain; or~~

~~(C) The net salvage value of any property the State retains less any rental to which it is entitled; and~~

~~(D) Such other consideration as may be deemed by the Commission to be in the best interest of the State.~~

~~(b) The following factors shall be considered by the Commission in determining which rental method should apply:~~

~~(1) The amount of rental the State would receive under various rental methods;~~

~~(2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;~~

~~(3) Whether a particular method or amount of rental would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;~~

~~(4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6371.~~

~~(5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;~~

~~(6) Other factors relating to the appropriateness of the proposed rental method.~~

~~(c) The following limitations shall apply to rental based on the volume of commodities passing over State lands:~~

~~(1) Rental shall not be imposed more than once for the identical commodity passing over the same State land if the ownership of that commodity has not changed.~~

~~(2) The rental rate for a right-of-way for passage of a commodity across State lands shall be made proportional to the percentage of the total length of the pipeline or conduit that such right-of-way comprises. For the purposes of this section, the total length of a pipeline or conduit shall be the length of the pipeline or conduit between two facilities, uninterrupted by another facility. "Facility" includes terminal, production, storage, refining, manufacturing, processing, mixing or intermixing facilities.~~

~~(d) Rental adjustment during the lease term shall be provided for as appropriate.~~

Rent or Other Consideration.

(a) Rent or other consideration for the various categories of uses shall be in the best interest of the State and may be based on one or more of the following methods:

(1) 9% of the appraised land value;

(2) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);

(3) Comparison to rents for other similar land or facilities;

(4) \$0.05 per diameter inch per linear foot of pipeline, conduit, or fiber optic cable;

(5) Benchmarks for regions where there are large concentrations of similar facilities (benchmark rental rate to be based on analysis of similar or substitute facilities in the local area);

(6) For salvage permit operations, the Commission shall agree to a division of the net value of State-owned objects recovered by the permittee, after a deduction of reasonable salvage cost. The percentage of the net value of State-owned objects retained by the Commission shall be based on the complexity of the project and may be negotiated. The State retains ownership of all items recovered until released and has a first right to select objects and may retain any or all of the objects recovered. If the State elects to retain objects with a value greater than its agreed percentage share, it shall reimburse the permittee to the extent of the agreed division of value.

- (7) For archaeological permits, artifacts collected shall remain State property, except that the Commission may authorize the transfer of title to artifacts for the purposes of research or display to museums, educational institutions, or other appropriate locations available to the public; or to a culturally affiliated Native American tribe.
- (8) For Forest Management Agreements: Rent may constitute enhancement of the land's value resulting from the use;
- (9) Other such methods or information that are based on commonly-accepted appraisal practices and principles.
- (10) For leases for a recreational pier or buoy, rent shall be based on local conditions and local fair annual rental values;
- (b) Notwithstanding section (a) above, minimum annual rents for the various lease/permit categories shall be as follows :
 - (1) Commercial Use: \$600
 - (2) Industrial Use: \$600
 - (3) Right of Way Use: \$450
 - (4) Grazing: \$600
 - (5) Agricultural: \$600
 - (6) Recreational: \$125
 - (7) Public Agency: \$125;
 - (8) Protective Structure: \$125;
 - (9) Dredging: \$125;
 - (10) All other General Lease or Permits: \$125.
- (c) Effective January 1, 2014, the minimum annual rents for the various lease/permit categories will be recalculated every five (5) years, at the end of June, using the adjustment formula identified in section 1900(m). Regardless of whether the application of the Adjustment Formula results in an adjusted minimum annual rent that is greater or lesser value than the previous year's rent, the adjusted minimum annual rent will never be lower than the minimum annual rents set in section 2003(b).
- (d) The following may be considered by the Commission in determining which rent method should apply:
 - (1) The amount of rent the State would receive under various rental methods;
 - (2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;
 - (3) Whether a particular method or amount of rent would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;
 - (4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6370.1.
 - (5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;
 - (6) The appropriateness of the proposed rental method.
- (e) Other factors in determining *Rent or Other Consideration*:

- (1) Authority for rent adjustment during the lease term shall be provided and may include application of the California Consumer Price Index.
- (2) Lease areas may include a reasonable impact area beyond the footprint of the actual facilities or improvements occupying State land based on local conditions. The impact area is intended to reflect the additional and temporary use, as well as impacts to public access, of State land for the docking of vessels, maintenance of the facility, or other such uses. Rent may be charged for the impact area.
- (3) In addition to the annual rent or other consideration, the Commission may require the lessee/permittee to pay an annual administrative fee for the reimbursement of staff costs associated with, but not limited to, lease/permit compliance; enforcement; periodic rent reviews, insurance or surety review; or other such activities as may be reasonably required over the term of the lease/permit. The annual administrative fee may be charged as either a flat rate or as a percentage of the rent.
- (4) Rent may be discounted or waived for use of sovereign lands if the Commission, at its sole discretion, determines that a significant regional or statewide public benefit is provided or accrues from such use.

Authority Cited: Sections 6105, 6108, 6309, 6321.2, 6503, and 6503.5, Public Resources Code.

Reference: Sections 6321.2, 6370.1, 6503, and 6503.5, Public Resources Code.

SPECIFIC PURPOSE OF THE REGULATION

Paragraph (a) of the proposed amendment to Section 2003 updates and consolidates the various rent-setting methods available to Commission staff in one easy-to-read section. The paragraph eliminates outdated or inapplicable references, such as the “volume of commodities passing over the lease premises” method (aka “throughput”), which is no longer used by the Commission due to a court decision, and the rent-free provision for a private recreational pier. Paragraph (a)(4) also reflects the updated rent per linear foot of pipeline, conduit, or fiber optic cable as previously calculated in the *Technical, Theoretical, and/or Empirical Study, Reports, Or Documents* section of this Initial Statement of Reasons.

Paragraph (b) brings the minimum annual rents for the various lease categories current to June 2012 as calculated in the *Technical, Theoretical, and/or Empirical Study, Reports, Or Documents* section of this Initial Statement of Reasons.

Paragraph (c) adds an automatic adjustment of the minimum annual rents for the various lease categories pursuant to changes in the California Consumer Price Index, as calculated in the *Technical, Theoretical, and/or Empirical Study, Reports, Or Documents* section of this Initial Statement of Reasons.

Paragraph (d) summarizes the factors that Commission staff may consider when determining which rent-setting method shall apply. Other than changing the word “rental” to “rent” in the text, this paragraph is unchanged from the current regulations [paragraph (b)(1) through (b)(6)].

Paragraph (e) addresses other factors that Commission staff may take into account when determining the rent or consideration for a lease, permit, or other agreement. Paragraph (e)(1) is a revision to the current regulations [paragraph (d)] to specifically allow for the use of the California Consumer Price Index as a means for adjusting annual rent during the term of the lease. Paragraphs (e)(2) and (e)(3) are proposed additions to the regulations that Commission staff believe are necessary to effectively carry out the Commission’s leasing functions. Paragraph (e)(4) is a revision consolidating two existing regulations [current paragraphs (a)(4)(A) and (a)(4)(B) under Section 2003]. The revisions to Paragraphs (d)(4) and (d)(5) provide Commission staff with greater discretion in assessing the “public benefit” that can be used to discount rent.

NECESSITY

The proposed amendments to Section 2003 are necessary in order to update the minimum annual rents, the methodology used in setting rental rates, and the identification of other factors pertaining to the Commission’s rent setting practices. The minimum rents contained in the current regulations are more than 30 years old and they do not cover the staff costs needed to maintain the lease (e.g. input and monitor insurance and bond information for compliance purposes, perform a rent review every five years, and conduct site inspections as needed). At the very least, the minimum rents need to be adjusted to reflect the costs of inflation and bring the Commission’s minimum rents current in accord with the suggestions articulated in the BSA’s 2010 audit. Accordingly, it is proposed that the minimum rents, including the \$0.02 per diameter inch per linear foot method, be updated through use of the California Consumer Price Index. Additionally, the rent method assessing the “volume of commodities passing over the lease premises” (aka “throughput charge”), is no longer used by the Commission because it was found to violate the Commerce Clause of the United State Constitution. Similarly, the enactment of Chapter 585, Statutes of 2011 on January 1, 2012, eliminated rent-free private recreational pier permits, so paragraph (a)(5) of the current regulations should also be removed. The proposed regulations add other rent-setting methods. These other methods are based on common appraisal practices and provide staff with greater flexibility to address local market conditions and/or unique physical characteristics of the State’s property. The ability to use “benchmarks” will also increase staff’s ability to set and adjust rents in geographic locations where there are large concentrations of similar uses, such as recreational piers at Lake Tahoe or in the Sacramento/San Joaquin River Delta. Finally, the proposed amendments identify other factors that Commission staff may take into account when setting the annual rent or adjusting the annual rent. These factors include the addition of a reasonable impact area to the lease premises, the use of the

California Consumer Price Index for adjusting rent during the lease term, the addition of an administrative fee for reimbursement of staff costs for managing the lease, and the discounting or waiving of rent if the lease results in a significant regional or statewide public benefit. All of these proposed amendments are considered necessary to enable Commission staff to perform its leasing and rent-setting functions to the best of its ability and in the best interest of the State.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS AND BUSINESSES.

The purpose of the proposed regulation is to update and amend sections of the existing regulations that pertain to *Definitions*, *Categories of Leases or Permits*, and *Rental*. Staff has determined that there are no alternatives to *updating* the regulations other than continuing to use the existing regulations, which were last updated in 1992. Further, staff has investigated alternatives to *amending* the existing regulations and has determined that there are no alternatives that would be more effective in carrying out the purpose of the proposed regulation while lessening any adverse impacts to affected private persons or businesses.